IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JOHDPUR
::::

JUDGMENT

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1. **S.B. CIVIL MISC. APPEAL NO.1468/2004- SHIVNATHRAM & ANR. VS. LRS OF GUMANARAM & ORS AGAINST THE ORDER DATED 19.7.2004 PASSED BY SHRI RAMCHANDRA, RJHS, DISTRICT JUDGE, BALOTRA IN CIVIL MISC. APPLICATION NO.22/1996.**

2. **S.B. CIVIL REVISION PETITION NO.214/2004- KAMLA & ANR. VS. SHIVNATHRAM & ORS AGAINST THE JUDGMENT DATED 17.4.2004 PASSED BY SHRI RAMCHANDRA, RHJS, DISTRICT JUDGE, BALOTRA IN CIVIL ORIGINAL CASE NO.17/1996.**

DATE OF ORDER : 1.8.2005

PRESENT.
HON'BLE MR. PRAKASH TATIA,J.

Mr.RR Nagori, for the appellant in appeal.
Mr.SD Vyas, for the respondent in appeal.

Mr.SD Vyas, for the petitioner in revision petition.
Mr.RR, Nagori, for the respondents in revision petition.

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Heard learned counsel for the parties.

The present appeal challenging the order dated 19th July, 2004 passed by the trial court has been filed by the plaintiffs as the plaintiffs'

application for grant of temporary injunction filed under Order 39 Rule 1 and 2 CPC was dismissed by the trial curt. The defendants also preferred S.B.Civil Revision Petition No.214/2004 and challenged the order of the trial court dated 17th April, 2004 by which the trial court rejected the defendant's application filed under Order 7 Rule 11 CPC.

According to learned counsel for the appellant the matters may be heard and decided together as there shall be common question of facts and law in both the matters as objection has been raised about the maintainability of the suit of the plaintiffs and defendant is seeking dismissal of the suit of the plaintiffs under Order 7 Rule 11 CPC and that may be a relevant issue for deciding the prima facie case of the plaintiffs.

Brief facts of the case are that the plaintiffs-appellants in S.B. Civil Misc. Appeal NO.1468/2004 filed a suit with prayers; (i) the plaintiffs have become owner of the property by adverse possession, (ii) the agreement dated 14th Oct., 1991 may be cancelled and the plaintiffs may be granted decree of Rs.2,78,000/-, which was the amount paid by the plaintiffs to the defendants for purchase of the land in question and (iii) in the alternative the decree for specific performance of contract dated 12th Dec., 1983 and agreement dated 24th Oct., 1991 and for grant of decree for injunction against the defendants that the defendant be

restrained from dispossessing the plaintiffs from the land in dispute and in case, they dispossesses the plaintiffs, they may be removed from possession. In addition to above reliefs, the plaintiff sought relief of injunction against the defendants so as to restrain them from initiating the criminal cases and further for dropping the criminal cases.

The plaintiffs also submitted two applications for grant of temporary injunction; one is registered as C.M. No.22/96and another as CM No.11/97. From application no.11/97, it appears that plaintiff in this application only requested the trial court to pass interim order earliest as the defendants were planning to sell the property in dispute, but that application since had title as under Order 39 Rule 1 and 2 CPC, therefore, it was also registered as separate application under Order 39 Rule 1 and 2 CPC. The trial court after hearing both the parties by order dated 7.1.98 allowed the plaintiffs' application for grant of temporary injunction and directed both the parties to maintain the status-quo with respect to the property in dispute and restrained both the parties from encroaching upon the land. Against this order, though passed in favour of the plaintiffs, the appellants for seeking specific order restraining defendants from interfering in their possession preferred S.B. Civil Misc. Appeal No.162/1998. The said appeal was heard and decided by this Court vide order dated 29.1.2002. This Court held that the trial court failed to consider the question of prima facie case, balance of

convenience and irreparable injury and decided the application improperly, therefore, the trial court has committed error of law. The matter was remanded back to the trial court to decide the application afresh. After the remand, the trial court decided the injunction application afresh and held that since the plaintiffs filed the suit for specific performance of contract dated 7th August, 1973 and 12th Dec., 1983, therefore, plaintiffs have not acquired right, title or interest in the property in dispute and cannot get injunction against true owner.

The trial court since dismissed the injunction application of the plaintiff after remand order of this Court dated 29.1.2002 in appeal no.162/1998, therefore, plaintiffs appellants have preferred this appeal before this Court to challenge the order of the trial court dated 19th July, 2004.

The defendants since submitted application under Order 7 Rule 11 CPC on the ground that suit of the plaintiffs has been filed for the agricultural land, hence, it is barred by law as suit for the agricultural land is not maintainable in civil court. The defendant's further plea was that the suit for specific performance of contract is also barred by time, therefore, the suit is required to be dismissed. The defendant's application under Order 7 Rule 11 CPC was dismissed by the trial court after holding that the suit for specific performance of contract as well

as for refund of the sale consideration is maintainable only in the civil courts. The trial court also observed that the objection about the suit is barred by time can be taken in the written statement and it cannot be decided at this stage. The trial court rejected the defendant's application for dismissal of the suit under Order 7 Rule 11 CPC vide order dated 17th April, 2004. Therefore, the petitioners have preferred the revision petition being S.B. Civil Revision Petition NO.214/2004.

I have heard learned counsel for the parties and perused the record also. It appears from the facts that the suit land is an open piece of land and both the parties are claiming their possession over the land. According to plaintiffs after the agreement to sell dated 3rd August, 1973, the part of the land was directly sold in pursuance of the agreement to sell to the purchasers and, therefore, the agreement dated 3rd August, 1973 was acted upon on different dates on 12th April, 1983 by defendant no.3, 29th Nov., 1983 by defendant no.4 and on 12th Dec., 1983 by defendant no.2 by executing another agreement. Therefore, the plaintiffs are in settled possession of the property in dispute in part performance of the contract and, therefore, they have right to protect their possession on the strength of the agreement to sell coupled with delivery of possession. It is also submitted that the suit has been filed for specific performance of contract and also for refund of the certain amount paid by the plaintiff to the defendant, therefore,

the suit is maintainable in only civil court and is not barred by law. In such circumstances, the trial court should have passed the order at least to maintain the status quo again so as to preserve the property during the pendency of the suit as done by the trial court itself on earlier occasion by order dated 7.1.98. According to learned counsel for the appellant, though the order dated 7.1.98 has been set aside, but that was set aside only on the ground that the trial court failed to decide the application issuewise. It is also submitted that in view of the fact that there are serious debatable questions involved in the suit and in view of the fact that the property in dispute is open piece of land, therefore the trial court, should have passed the order restraining the defendants from alienating the property in dispute till the pendency of the suit and for restraining them from dispossessing the plaintiffs from the land in dispute. It is also submitted that the court below has committed serious error of law as the court below failed to appreciate the facts of the case and could not apply the correct position of law because of that reason only.

Learned counsel for the defendants vehemently submitted that the suit of the plaintiffs as framed is not maintainable as it is barred by law and suit for reliefs relating to agricultural land has been filed in the civil court. It is also submitted that the plaintiffs sole aim and object is to get the stay against the initiation and continuation of the criminal

proceedings and that relief cannot be granted. It is also vehemently submitted that the defendants are in actual physical possession of the land in dispute, therefore also, no relief of injunction can be granted. It is also submitted that no injunction can be granted against the true owner and admittedly, the defendants are owner of the property as no title has been conveyed by defendants to the plaintiffs in any manner.

In support of defendants' contention on application under Order 7 Rule 11 CPC and to challenge the order of the trial court dated 17th April, 2004 again it has been submitted that the suit is barred is apparent from the facts mentioned in the plaint itself as plaintiffs admitted that the suit land is agricultural land and since the defendants are seeking specific performance of contract, which was executed decades ago, therefore, the suit of the plaintiffs is barred by time.

Learned counsel for the plaintiffs opposing S.B. Civil Revision Petition No.124/2004 vehemently submitted that while deciding application under Order 7 Rule 11 CPC only, the applicant's claim can be looked into and in this case, it is clear that the plaintiffs sought relief of specific performance of contract and also sought relief of cancellation of the agreement and for refund of the sale consideration. Therefore, the suit is maintainable in the civil court only and no such relief can be granted by the revenue court.

I considered the submissions of learned counsel for the parties. It will be just and proper to decide the S.B. Civil Revision Petition No.214/2004 first because in case it is held that the suit of the plaintiffs is barred and liable to be rejected under Order 7 Rule 11 CPC then there will be no need of passing any order in the appeal of the plaintiffs seeking injunction. It is clear from the plaint itself that plaintiffs sought relief of specific performance of contract dated 12th Dec., 1983 and 24th Oct., 1991. For this relief, only civil court has jurisdiction, is not in dispute. The plaintiffs also sought relief of cancellation of agreement dated 24th Oct., 1991 and for refund of Rs.2,78,000/-. For this relief also, the civil court has jurisdiction. Therefore, in view of the above, the plaintiffs' suit cannot be held to be barred by any law. Hence, the civil court had jurisdiction to decide the suit. In a case where there are composite reliefs, one can be granted by the civil court and another by the revenue court then also in this matter, the main reliefs which have been claimed by the plaintiffs can only be granted by the civil court, therefore also the suit of the plaintiffs is not barred by law. So far as objection on the ground of limitation is concerned, that question is not a pure question of law in the facts of this case and depends upon from very many other facts, which can be proved by the parties by their evidence and thereupon only the court can decide whether the suit of the plaintiffs for the reliefs is barred or not. Therefore, the trial court was right in rejecting the petitioners-

defendants application under Order 7 Rule 11 CPC.

In view of the above, I do not find any merit in the revision petition. Hence, the revision petition is dismissed.

Since this Court already upheld the order of the trial court wherein it has been held that the civil court has jurisdiction to hear the suit, therefore, it will be necessary to examine whether the trial court has committed any error of fact or law in deciding the injunction application of the plaintiffs and the order is perverse or capricious. So far as the reasons given by the trial court while deciding the issue of prima facie case is concerned, the court below merely observed that the plaintiffs' case is based upon the agreements of 1973 and 1983 and by agreement he has not acquired any title to the property. Merely on this sole ground, the trial court held that there is no prima facie case in favour of the plaintiffs. The trial court ignored all the relevant facts , which were very crucial for deciding an application for grant of temporary injunction. The plaintiffs' case is that agreements were executed for the land in question long ago, in the year 1973, on 3rd August, 1973 and in pursuance of the said agreement, the sale deeds were executed by the defendants in favour of the persons as per the directions of the plaintiffs. This fact was not even considered by the court below despite the fact that it was submitted that sale deed dated

24th Nov., 1983 was executed and it was registered also. The trial court also did not consider the facts and circumstances in which defendant no.2 alleged to have executed an agreement dated 12th Dec., 1983. These all facts only show that there were some transactions between the parties in relation to property in dispute. The transactions in fact, took place or not, can be decided only after evidence of the parties. The trial court also did not consider the important relevant fact that in case the property will not be preserved then both the parties will be at loss. Therefore, in the facts and circumstances of the case and looking to the long pendency of the litigation and when there was the order of injunction since 1998, the trial court should not have rejected the petitioners' application for grant of injunction only by taking into account one of the aspect of the matter.

The trial court, therefore, committed error of law in deciding the issue of prima facie case against the plaintiffs and in the same way when all those facts were not considered, the trial court committed illegality in deciding the issue of balance of convenience and irreparable injury in correct perspective. Assuming for the sake of argument that title vests in the seller defendants, still whether in the facts and circumstances of this case, it will be just and proper to allow the alienation of the property or altering the physical possession of the open piece of land by any of the party can be just and proper. The trial court

further failed to appreciate that the defendants even did not say that they ever dealt with the property since 1973 or 1983 or have executed any sale deed then what can be the necessity of dealing with the property during the pendency of the suit. In case order of injunction will not be passed, the plaintiffs will certainly suffer irreparable injury as the entire nature of the property may be changed and third party's interest may be created during the pendency of the suit by the defendants. Apart from it, the court below also failed to took note of the order of this Court dated 28th August, 2000 passed in S.B. Civil Misc. Appeal No.162/1998 whereby this Court directed trial court to disposed of the suit expeditiously.

In the light of that order, the trial court could have passed the order preserving the property and, thereafter, the trial court could have proceeded to decide the suit expeditiously. The apprehension of learned counsel for the respondents defendants that plaintiffs want for interim relief of staying the criminal proceedings is not well founded as no such prayer has been made by learned counsel for the appellants plaintiffs and further because of the reason that no injunction can be granted against the initiation of legal proceedings.

In view of the above discussion, S.B. Civil Misc. Appeal No. 1468/2004 deserves to be allowed, hence allowed. The order of the

trial court dated 19th July, 2004 is set aside. The S.B. Civil Revision Petition No.214/2004 is dismissed. Both the parties are directed to maintain the status-quo and shall not alter the position of the land in dispute nor they will sale or enter into agreement of sale of the property till the pendency of the suit. The trial court is directed to decide the suit expeditiously.

(Prakash Tatia), J.

c.p.goyal/-